

CLAIM SUMMARY / DETERMINATION

Claim Number:	917029-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$16,364.83

FACTS:

Oil Spill Incident: On November 17, 2016, Galveston Bay Energy LLC., contacted Oil Mop, LLC. (OMI) to respond to a pipeline that was leaking due to an equipment failure.¹ The Baytown Fire Department had already responded and deployed absorbent boom. Crude oil condensate had discharged from the pipeline into Saw Pit Gully, a tributary of Cedar Bayou, a navigable water of the U.S. U.S. Coast Guard Sector Houston/Galveston was notified by the National Response Center regarding the incident. It is unclear whether USCG personnel responded to the site. Galveston Bay Energy LLC is the party responsible for the pipeline and is potentially liable for the incident.

Description of Removal Activities for this claimant: On November 17, 2016, OMI was called out to deploy containment boom to prevent the leaking oil from reaching Cedar Bayou. OMI collected and disposed of the sorbents placed by the Baytown Fire Department. Then, OMI placed new sorbent boom and pads in the Saw Pit Gully. On November 18, 2016, OMI returned to flush the oil into a pocket to be collected by the sorbents. They used a pump and jon boat to do it. After that, they returned once a week for the next three weeks to check the area and use pads to soak up pockets of product and dispose of it in drums, which they took to a waste disposal facility at the end of December 2016.

The Claim: On June 16, 2017, Oil Mop, LLC submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$16,364.83.²

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

¹ See Oil Mop, LLC Claim Package dated June 16, 2017.

² See Oil Mop, LLC Claim Package dated June 16, 2017.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident”.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

1. MST1 [REDACTED] of USCG Sector Houston/Galveston provided FOSC coordination 33 U.S.C § 2702(b)(1)(B) and 2712(a)(4)³;

³ See Email sent by [REDACTED] to NPFC, dated June 30, 2017.

2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);

B. Analysis:

NPFC CA reviewed the cost invoices, dailies and other documentation provided by the Claimant or independently collected by the NPFC to confirm that the claimant had incurred the costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined to be consistent with the NCP in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this claim are OPA-compensable based on the supporting documentation provided. The NPFC has determined that \$15,331.30 is supported by the record and fully documented. The NPFC denies the following amounts:

Denied Items:

1. Analytical services costs are reduced by \$56.00. Allowable amounts for third party costs are cost plus 20%. The amount charged by OMI is based on an estimate in a field ticket. Actual amounts billed by Xenco Laboratories totaled \$645.00. Cost plus 20% is \$774.00, not \$830.00.
2. Administrative fee of \$150.00 is denied. It does not appear in OMI’s rate schedule or service agreement. OMI states that it is for scheduling, processing and preparing documents for disposal. It is denied because there is no basis for the amount charged.
3. The \$1,615.00 in disposal costs claimed are reduced by \$327.53. OMI’s rate schedule allows for disposal after storage at cost plus 30%. The disposal invoice from the landfill totaled \$990.36. Cost plus 30% is the allowed total of \$1,287.47. The amount above that is denied.
4. The transportation stop fee of \$500.00 is denied. It does not appear in OMI’s rate schedule or service agreement. OMI states that it is a flat “all inclusive” fee derived by its disposal manager. It is denied because there is no objective basis for the amount charged.

The total denied costs are \$1,033.53. Should the Claimant decide to request reconsideration of any denied amounts, it **MUST** provide objective evidence of the actual costs incurred at the time of the incident, not estimates signed off by the RP.

The NPFC hereby determines that the OSLTF will pay \$15,331.30 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917029-0001. All costs offered are for charges incurred by the Claimant or for costs

expended by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF.

AMOUNT: \$15,331.30

Claim Supervisor:



Date of Supervisor's review: July 3, 2017



Supervisor Action: *Approved*

Supervisor's Comments: